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U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Allocation of Spectrum Below
5 GHz Transferred from
Federal Government Use

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ET Docket No. 94-32

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Comments of the Chief Counsel for Advocacy
of the United States Small Business Administration
on the Second Notice of Proposed Rulemaking

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March 20, 1995

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During the past six months, history has been made in Washington, DC. The Federal Communications Commission (Commission or FCC) has awarded licenses for interactive video, narrowband and broadband personal communication services (PCS) through an auction process. These Congressionally authorized auctions¹ of federal property have raised more than \$8 billion and more auctions, for regional licenses in both narrowband and broadband PCS, will be conducted forthwith.

The same legislation authorizing auctions also mandated that the federal government reassign for commercial use some 200 MHz of spectrum currently allocated for use by the federal

¹ In Title VI of the Omnibus Budget Reconciliation Act of 1993, Congress authorized the FCC to conduct auctions for the licensing of electromagnetic spectrum. Prior to the enactment of Title VI, spectrum was allocated either by comparative hearing or lottery -- in essence valuable government property was simply given away.

government. The National Telecommunications and Information Administration in the Department of Commerce was required to examine spectrum reserved for use by the federal government and identify which bands would be appropriate for reassignment to commercial use. The FCC was tasked with the responsibility for allocating the spectrum among various competing uses and establishing rules for conducting the auctions.

The Commission has determined that spectrum in the 4660-4685 MHz band be allocated for a variety of fixed and mobile services irrespective of whether the band is used for private services or subscription services. In re Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket NO. 94-32, First Report and Order and Second Notice of Proposed Rulemaking, slip op. at ¶ 41 (February 17, 1995) (SNPR). Some of these applications will involve interactive video, voice, and data transmission for consumers in both urban and rural areas. Other uses may include relocation of fixed point-to-point microwave service that will be displaced by the development of broadband PCS and mobile services involving aeronautical and maritime communications. The Office of Advocacy believes that the Commission's allocation makes a Solomonian determination given the diversity of views expressed in the record on the appropriate use of the 4660-4685 MHz band.

The FCC issued the SNPR to receive comments on the rules it should adopt for auctioning this band. The issues raised in the SNPR are similar to those the Commission has faced in auctioning other spectrum, such as size of licensing area, eligibility requirements, and treatment of designated entities. SNPR at ¶¶ 60-129. The Office of Advocacy is particularly concerned about the size of the licensing area and the treatment of designated entities.

The FCC proposes to award licenses for 4660-4685 MHz band on a Major Trading Area (MTA) basis. *Id.* at ¶ 79. The Office of Advocacy generally supports awards of licenses on a Basic Trading Area (BTA) basis because it requires less capital to obtain a license and construct an operational communications system. However, the Office of Advocacy recognizes the dilemma the Commission faces in determining the appropriate licensing area. The variety of services that may offered in the band make it impossible to estimate whether viable services can be rendered on a BTA basis and aggregation of BTA licenses may raise transactions costs sufficiently to limit potential services. Therefore, the Office of Advocacy endorses the FCC proposal to award spectrum on a MTA basis.

However, the Office of Advocacy's support of MTA licenses is predicated upon the FCC's adoption of a partitioning scheme that would enable an MTA license to transfer part of the MTA territory

to another party. The Office of Advocacy opines that the partitioning plan adopted by the Commission for rural telephone companies in the broadband PCS auctions would be an appropriate mechanism for partitioning MTA licenses in the 4660-4685 MHz band. That plan allows for partitioning prior to the auction and is an absolutely critical feature in auctioning the 4660-4685 MHz band. Many investors and lenders may be reluctant to provide financing to a small business if they do not believe that the small business has the resources needed to operate a communications system on a MTA basis. The ability to partition prior to auction will show potential investors that the small business has a business strategy appropriate to its size. The ability to partition will be critical to the success of any small business bidding on a MTA basis.²

In authorizing auctions, Congress mandated that rules be adopted to ensure that designated entities (small businesses, rural telephone companies, and businesses owned by women and minorities) have an adequate opportunity to obtain spectrum. The Commission proposes that women and minority businesses have a 25 percent bidding credit and that small businesses be permitted to pay the bid amount by installments. *Id.* at ¶¶ 108, 112. All designated entities would be eligible for reductions in upfront payments. *Id.* at ¶ 117. Finally, the Commission requests

² The Office of Advocacy would have no objection if the Commission authorized pre-auction partitioning for businesses owned by women and minorities and rural telephone companies.

comment on whether it should establish an entrepreneur's block as it has in the broadband PCS auction.

The crucial element that the FCC must consider in the development of rules for treatment of designated entities is that the licenses for the 4660-4685 MHz band are being awarded on an MTA basis. Faced with a similar situation in the development of rules for the auction of narrowband PCS licenses in MTAs, the FCC dramatically revised its licensing regime. It adopted many of the mechanisms that were initially developed to assist designated entities in the auctions for broadband PCS. The Commission reasoned that adoption of the broadband licensing regime was needed to reduce barriers to entry for designated entity entry into the narrowband auctions. The Office of Advocacy believes that reasoning is equally applicable to the licensing of the 4660-4685 MHz band. Large service territories generally are appealing to large businesses and small firms have little chance of obtaining the financing needed to bid for MTA licenses absent special provisions.

The Office of Advocacy opines that the single best method for reducing the barriers to entry in the 4660-4685 band is to establish an entrepreneur's block in which large businesses would be prohibited from bidding. All designated entities would be eligible for participation as long as the entities did not exceed

the net worth criteria established for the MTA narrowband PCS auctions.

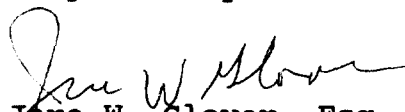
Small businesses would be eligible for participation in the entrepreneur's block if they had revenue of less than \$40 million. The Office of Advocacy believes that this definition is appropriate for a number of reasons. First, it is consistent with the definitions adopted by the Commission for other services and approved by the Small Business Administration pursuant to 15 U.S.C. § 632(a)(2). Second, it isolates those companies that have significantly greater difficulty in obtaining capital than larger enterprises. However, companies with revenue of \$40 million are sufficiently large that they could survive in a competitive wireless communications marketplace. This survivability is particularly critical, where as here, the market for particular communication services is not well-defined.

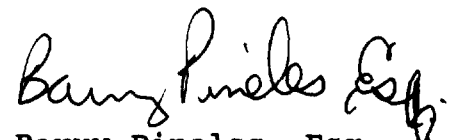
Finally, the Office of Advocacy opines that the Commission should not limit the bidding credit in the 4660-4685 MHz band to businesses owned by women and minorities. The same rationales for awarding bidding credits -- the difficulty in raising capital and the low participation by small business in wireless telecommunications -- militates against limiting the bidding credit to women and minority enterprises. For this reason, the Office of Advocacy supports the adoption of the 25% bidding credit for women and minorities and a 10% bidding credit for

small businesses.³ The adoption of the bidding credits will help ensure maximum participation by designated entities, including small businesses, in the offering of new and innovative wireless communication services.

The Office of Advocacy commends the FCC for its diligent efforts to meet the often polar objectives of the competitive bidding process. The Office of Advocacy believes that our recommendations, while not guaranteeing opportunities for designated entities, will certainly provide an increased probability that designated entities, and small businesses in particular, will participate in the marketplace for services located on the 4660-4685 MHz band.

Respectfully submitted,


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³ Evidence adduced by the Commission demonstrates that women and minorities tend to have greater difficulty in attracting capital than other small business owners.

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